

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Acceris Communications Corporation)	IC No. 05-S89548
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: January 29, 2007

Released: January 29, 2007

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Acceris Management and Acquisition LLC d/b/a Acceris Communications Corp.¹ (Acceris) asking us to reverse a finding that Acceris changed the Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.² On reconsideration, we affirm that Acceris's actions violated the Commission's carrier change rules.³

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ The rules were designed to take the profit out of slamming.⁵ The Commission applied the rules to all wireline carriers,⁶ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁷

¹ See Petition for Reconsideration of Acceris Management and Acquisition LLC d/b/a Communications Corp. (filed November 2, 2005) (*Petition*) seeking reconsideration of *Acceris Communications Corporation*, 20 FCC Rcd 15620 (2005) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See *Division Order*, 20 FCC Rcd 15620 (2005).

³ See 47 C.F.R. §§ 64.1100 – 64.1190.

⁴ See *id.*; see also 47 U.S.C. § 258(a).

⁵ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁶ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

⁷ See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.⁸ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁹

4. The Commission also adopted liability rules for carriers that engage in slamming.¹⁰ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹¹ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹²

5. The Commission received a complaint on May 24, 2005, alleging that Complainant's telecommunications service provider had been changed from Verizon to Acceris without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ we notified Acceris of the complaint.¹⁵ In response, Acceris submitted a letter of agency (LOA), signed electronically, as proof of authorization of the switch.¹⁶ The LOA, however, failed to confirm that only one telecommunications carrier may be designated as the subscriber's preferred intraLATA carrier for any one telephone number and, moreover, two digits of the telephone number alleged to be Complainant's were illegible. The Division found, therefore, that Acceris failed to produce clear and convincing evidence that Complainant authorized a carrier change and, therefore, that Acceris's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁷ Acceris seeks reconsideration of the *Division Order*.

⁸ See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁹ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹¹ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹² See 47 C.F.R. §§ 64.1140, 64.1170.

¹³ Informal Complaint No. IC-05-S89548, filed May 24, 2005.

¹⁴ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁵ See Notice of Informal Complaint No. IC 05-S89548 to Acceris from the Deputy Chief, Division, CGB, dated June 10, 2005.

¹⁶ Acceris's Response to Informal Complaint No. IC-05-S89548, received July 11, 2005.

¹⁷ See *Division Order*, 20 FCC Rcd 15620 (2005); see also 47 C.F.R. § 64.1150(d).

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny Acceris's *Petition*. In its *Petition*, Acceris acknowledges that an error resulted in the unauthorized change, claims it took immediate steps to correct the error and credit the charges, and states that it completed all remedial requirements set forth in the *Division Order* before the *Division Order* was issued.¹⁸ Acceris asserts that it did not willfully slam Complainant's telephone service and states the intent of its appeal for reconsideration is to remove the slamming complaint from Acceris's record.¹⁹

7. Acceris does not dispute the *Division Order*'s findings. Although we commend Acceris for taking appropriate remedial action after learning of its error, neither lack of intent nor remedial actions taken by Acceris before issuance of the *Division Order* alters Acceris's statutory liability under the Commission's carrier change rules.²⁰ Therefore, we deny Acceris's request to reverse the *Division Order*.

III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106 and 1.719, the *Petition for Reconsideration* filed by Acceris Management and Acquisition LLC d/b/a Acceris Communications Corp. on October 30, 2005, IS DENIED.

9. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

¹⁸ See *Petition*.

¹⁹ See *id.*

²⁰ See *Third Order on Reconsideration and Second Further Notice of Proposed Rule Making*, 18 FCC Rcd 5009, 5130, para. 81 (2003) ("the fact that a carrier has chosen to appease a customer does not alter its statutory liability . . . to the authorized carrier.").